



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

**OCT 26 2009**

THE ADMINISTRATOR

The Honorable John D. Rockefeller IV  
United States Senate  
Washington, D.C. 20510-4802

Dear Senator Rockefeller:

Thank you for your September 10, 2009, letter about the Spruce No.1 mine in Logan County, West Virginia. I understand your very strong concerns in this matter and appreciate your candor regarding the need to reach an effective and timely resolution. I know we share recognition of the importance of providing the public and regulated community with Clean Water Act (CWA) programs that are predictable, consistent and environmentally effective. I value your leadership and support in ensuring these goals are met.

Your letter correctly recognizes that the Spruce No.1 surface mine has been under CWA, Surface Mining Control and Reclamation Act, and National Environmental Policy Act (NEPA) review for over a decade. As part of a settlement agreement in a lawsuit challenging the issuance of a CWA General permit for the Spruce No.1 mine in 1998, the Mingo Logan Coal Company agreed to submit a CWA individual permit application and prepare an Environmental Impact Statement for their mining operation. Environmental Protection Agency (EPA) Region 3 identified serious concerns with the proposed mining operation during the subsequent CWA and NEPA evaluation, including concerns regarding almost ten miles of streams that would be buried, downstream water quality impacts, cumulative environmental impacts, and the adequacy of mitigation to replace lost aquatic functions. As part of that review, the scale of the project was reduced. The Corps of Engineers issued a new permit in 2007. Work under this permit was stopped as part of a standstill agreement filed with Federal District Court in West Virginia.

EPA remains concerned with the scale, magnitude, and severity of anticipated environmental and water quality impacts associated with the Spruce No.1 mine. I want to emphasize, however, that this mine represents an unusual set of circumstances which we do not expect to be repeated again. EPA intends to focus its resources on coordination with the Corps, mining companies, the states, and public on the CWA review of pending and future mining operations.

As you know, EPA Region 3 recently initiated review under CWA Section 404(c) of the Spruce No.1 mine in response to concerns that, as permitted, the project would result in unacceptable adverse environmental and water quality impacts to waters of the United States.

CWA Section 404(c) is not intended to be used by EPA to second guess a permit decision made by the Corps of Engineers. Instead, Congress established Section 404(c) to ensure EPA conducted an independent review of projects proposing to discharge pollutants in the nation's streams, rivers, wetlands and other waters, including projects previously approved by the Corps of Engineers, where EPA determined such projects might unacceptably affect aquatic resources. EPA has used this authority just 12 times since 1972, and this is the first circumstance involving a previously authorized project.

As authorized by the Corps 2007 permit, the Spruce No.1 mine will bury over 7 miles of streams and the mitigation to compensate for this loss will rely significantly on drainage ditches to replace destroyed stream functions. The watershed in which the mine is located has an additional 12 surface coal mines either already approved or planned to be built contributing to significant cumulative environmental and water quality impacts. The watershed cannot sustain such additional mining if action is not taken now to reduce these anticipated effects. Current technical studies and data on surface coal mining outline the significant potential for water quality degradation from surface mining operations such as Spruce No.1, and water quality effects which the current permit does not effectively address.

I have asked Region 3 to begin immediately to coordinate with the Corps of Engineers and the Company to evaluate cost effective and environmentally responsible options for responding to EPA's outstanding direct, indirect, and cumulative environmental and water quality concerns. I understand that initial discussions between the agencies and with the Mingo Logan Coal Company will begin formally this week. Our goal is to identify improvements to the mining operation that could effectively avoid and minimize anticipated environmental and water quality impacts consistent with the requirements of the CWA and, if possible, allow the mine to move forward in a timely manner. EPA will provide you and your staff with regular updates on the progress of our discussions.

I want to re-emphasize my commitment to implement EPA's authorities and responsibilities under the CWA in a manner that is transparent, environmentally effective, and consistent with requirements of the law. Like you, I believe this can be accomplished in a way that fully recognizes the importance of coal mining to the economy, for jobs, and for meeting the nation's energy needs. I look forward to working closely with you and Congress to meet these goals. I hope you will contact me if you have any questions, or your staff may call Arvin Ganesan in EPA's Office of Congressional and Intergovernmental Relations at 202-564-4741.

Sincerely,



Lisa P. Jackson

cc: The Honorable Nancy Sutley, Chair, White House Council on Environmental Quality  
The Honorable Jo-Ellen Darcy, Assistant Secretary of the Army (Civil Works)

*Send to Rockefeller.  
I know you feel  
very strongly about these  
issues. I look  
forward to  
working together on  
them. I would appreciate  
an opportunity to talk to  
you further on this or  
MM, in general.*